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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. 476 OF 1999

Smt. Vaishali Harischandra

Gaikwad & Anr. .. Petitioners.

VS.

State of Maharashtra

& Ors. .. Respondents.

Smt. Revati Mohite-Dere for petitioners.

Shri S.R. Borulkar with Shri A.S. Gadkari,

APP., for Respondents.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 13th October, 2006.

ORAL JUDGMENT (Per J.N. Patel, J.): -

. Heard the learned counsel for the petitioners and the learned Public Prosecutor for the Respondents.

2. The petitioners have filed this writ petition claiming compensation in the sum of Rs. 5 lacs against the State for custodial death of her husband Harischandra Jivraj Gaikwad and also for rehabilitation with other ancillary reliefs like

directing the respondents to inquire into the custodial death of Harischandra Jivraj Gaikwad and to take action against the police officers who are found responsible for the death of her husband.

3. It is the case of the petitioner that she was married to deceased Harischandra Jivraj Gaikwad, a resident of Varavde, Taluka - Madha, District - Solapur on 28.4.1996 and out of the said wedlock petitioner no. 2 was born on 1.5.1997. According to the petitioner no.1, her husband was qualified in computer science and was running a computer agency under the name and style of M/s. Anusaya Computers at Plot No. 66/6, D-II, D-II, MIDC, Chinchwad Pune from 1996 and they were residing in the tenanted premises at Chikhali, Taluka Haveli, Dist. Pune. It is the case of the petitioner no.1 that her husband was doing well in his business and was filing income-tax returns and had a regular income and was the sole bread earner of the family. The petitioner no. 1 has narrated facts leading to the arrest of the petitioner no.1's husband in a chronological order which reads as under :-

"(a) 21.7.98. Deceased Harischandra Jivraj Gaikwad left for Bombay on 21.7.98 at 4.30 p.m. and returned from Bombay on 23.7.98.

- (b) 23.7.98. Harischandra Gaikwad, the deceased came to be arrested by the Police officers of the Dehu Road Police Station on 23.7.98 at 5.30 p.m., when he was sitting with his friends at the Jai Malhar Hotel, Akrudi, without informing him the reasons for his arrest nor was any arrest panchanama made at the time of his arrest. The same has been witnessed by several persons and there are affidavits of these witnesses to that effect, which have been filed in the Inquiry being conducted by the Sub-Divisional Magistrate, Pune Sub-Division under the provisions of the Criminal Procedure Code.
- (c) 25.7.98. Deceased Harischandra came to be produced before the learned Judicial Magistrate, First Class, Vadgaon-Maval on 25.7.98, by submitting a Remand Report dated 24.7.98. The Learned Judicial Magistrate was pleased by its order dated 25.7.98 to grant police custody remand till 28.7.98.
- (d) 25.7.98. Deceased Harischandra was brutally tortured and beaten to death by the officers of the Dehu Road Police Station and he died at 11.45 p.m.
- (e) 26.7.98. Deceased was taken to Dr. Babasaheb

Ambedkar Cantonment General Hospital, Dehu Road on 26.7.98 at 12.10 a.m. where he was declared dead.

- (f) 26.7.98. The brother of the deceased, Shri. Dinkar Jivraj Gaikwad, who was residing at Chikali, Morevasti, Taluka - Haveli, District - Pune and other relatives were informed almost 9 hours after the death of deceased Harischandra, for reasons best known to Respondent No. 4.

At 11.00 a.m. on 26.7.98 an Inquest Panchanama was drawn of the dead body of deceased Harischandra who admittedly died in police custody. The body was examined by Taluka Executive Magistrate and the panchas. On examining the same, they found the following injuries :-

(1) Abrasion measuring 1 c.m. in length on the left chest and some coagulation of blood. (2) Coagulated blood marks 2" long and 3/4" broad on the right side of the neck below the ear at a distance of 2". (3) 1/2" long bleeding abrasion on the left shoulder. (4) Coagulated blood on both side of the right hand wrist, and (5) on the rest of the body there were blue black marks and blood had coagulated.

Since the cause of death could not be opined, the body was sent for post-mortem examination and accordingly a video shooting of the dead body was done. Despite several requests by relatives of deceased Harischandra to send the body to the Sassoon Hospital, Pune for post-mortem, for reasons best known to Respondent No. 4 and his officers, the body was sent to the Primary Health Centre, Talegaon Dabhade, Taluka - Maval, District - Pune, for post-mortem examination.

- (g) 26.7.98. The dead body of Harischandra who died whilst in police custody of Dehu Road Police Station, was sent for post-mortem examination to the Primary Health Centre, Talegaon Dabhade, Taluka - Maval, District - Pune to know the exact cause of death, at 2.30 p.m. The opinion as to the probable cause of death as given by Respondents Nos. 5 and 6 was cardio respiratory failure due to Vasco-Vegal Shock and sudden cardiac arrest. The Petitioners dispute the finding as to the cause of death given in the post-mortem report, as the deceased who was aged 24 years was a physically fit and healthy person, with no previous history of any heat ailment or disease.

(h) 26.7.98. Respondent No. 4, Shri Popat Devane (A.P.I.) of Dehu Road Police Station gave 'KHABARI JABAB' with regard to the death of Harischandra in police custody as required under the Criminal Procedure Code and the same came to be registered in the A.D. Registers, as A.D. No. 71/98.

(i) 27.7.98. The Learned Judicial Magistrate First Class, Vadgaon-Maval, Pune was informed of the custodial death of Harischandra."

4. It is the case of the petitioner no.1 that her husband came to be falsely implicated by the police officers of Dehu Road Police Station in a case of robbery which is alleged to have been committed at Ratnadeep Jewellers Shop situated at Chikhali, Taluka - Haveli, District - Pune on the night between 22.7.1998 and 23.7.1998 and the petitioner's husband came to be arrested in the said case which was registered vide C. R. No. 80/1998 at Dehu Road Police Station for having committed offences under Sections 457 and 380 of the Indian Penal Code for having broken open the jewellery shop and for having stolen gold and silver articles worth Rs. 1,36,500/-.

5. The petitioner has tried to explain that on the relevant date and time her husband was not at Chikhali or Akurdi but was with his relative Shri Dashrath

Bhagwan Ghadge at village Kalamboli, Taluka - Panvel, District - Raigad and that in the enquiry conducted by the Sub-Divisional Magistrate this fact has come on record and, therefore, this is a fit case where this Court should grant compensation to the petitioners as sought.

6. In the affidavit in reply filed on behalf of the respondents, it has been submitted that the matter relating to the custodial death of the petitioner's husband was got investigated by State CID, Crime, Maharashtra State, Pune Unit and they have found that Harischandra Gaikwad died natural death and that the said report was referred to the Sub-Divisional Magistrate, Haveli Division, and magisterial enquiry was conducted which arrived at a finding that the deceased had died before admission in the hospital and the death, as per the post mortem report, was due to the shock and cardio respiratory failure due to vaso-vagal shock and with sudden cardiac arrest during interrogation while he was in police custody.

7. It is also submitted by the respondent State that the petitioner had made a complaint before the National Human Rights Commission, which is a statutory body, to consider violation of human rights and as the deceased died while he was in police custody, the State Govt. had offered to pay compensation of Rs. 50,000/-. However, considering the fact that the

deceased was a young man of 24 years and has left behind his widow, the Commission directed payment of Rs. 1 lac inclusive of Rs. 50,000/- sanctioned by the State Govt. It is, therefore, submitted that the petitioners are not entitled for any compensation as the State Govt. has already offered to pay Rs. 1 lac and, therefore, the petition deserves to be dismissed.

8. Mrs. Mohite-Dere, the learned counsel appearing for the petitioners, submitted that the respondents have not disputed the fact that the petitioner no. 1's husband has died in police custody except for denying that his death was a result of custodial torture. She submitted that even if this Court examines the post mortem report and the findings of the Sub-Divisional Magistrate in the magisterial enquiry, it is quite evident that the nature of injuries noted in col. 17 of the post mortem report as well as the findings in the magisterial enquiry, that the concerned police officers who were incharge of the investigation, have suppressed the truth which caused death of her deceased husband, clearly indicates that though the deceased died out of cardio respiratory failure due to vaso-vagal shock with sudden cardiac arrest, but it was due to police brutality and torture in custody as he was arrested on suspicion of having committed robbery in a jewellery shop. It is submitted that the petitioner has not received the sum of Rs. 1 lac so far as offered by the State Government and that the

amount of compensation so offered is not sufficient. It is further submitted that the respondents have also not taken any follow-up action as directed by the National Human Rights Commission and, therefore, taking into consideration that the petitioner's husband was an income-tax payee and that the petitioner has a girl child to maintain, her claim for Rs. 5 lacs is just and reasonable in the facts and circumstances of the case. It is further submitted that the petitioner no. 1 is presently employed temporarily as Anganwadi Sevika. She being a graduate, as a part of rehabilitation package, she requires to be confirmed in her post as Anganwadi Sevika and be given promotion to the post of supervisor.

9. Mr. Borulkar, the learned Public Prosecutor, submitted that in view of the fact that the State has already sanctioned a sum of Rs. 1 lac as recommended by the National Human Rights Commission and taking into consideration the report of the State CID that concluded the investigation in the case and that of the Sub-Divisional Magistrate in magisterial enquiry, it is evident that the husband of petitioner no. 1 died a natural death. It, therefore, has no nexus with torture in police custody and has cited a case of Subhe Singh vs. State of Haryana and Ors., (2006) 3 SCC 178 where it has been held by the Supreme Court that the Court may not award compensation under Article 32/226 of the Constitution of India where there is no evidence

of custodial torture, except the statement of the person aggrieved and where such allegation is not supported by a medical report or other corroborative evidence (including visible marks / scars) or where there are clear indications that the allegations are false or exaggerated, fully or in part and that the aggrieved party should be relegated to traditional remedies available under civil/criminal law.

10. Mrs. Mohite-Dere, the learned counsel for the petitioners, submitted that from the facts on record as can be seen from the magisterial enquiry report, it is evident that the respondents, after causing arrest of the petitioner's husband, did not abide by the guide-lines laid down by the Supreme Court in D.K. Basu vs. State of West Bengal, AIR 1977 SC 610 and further has suppressed the fact relating to circumstances which led to the death of her husband in the magisterial enquiry. It is submitted by Mrs. Mohite-Dere that the National Human Rights Commission has also taken cognizance of the matter and awarded a sum of Rs. 1 lac and further directed the State to submit further report regarding action taken against errant police officials and it did found that the State has failed to comply with the directions and guide-lines issued by the Commission regarding custodial death of which no report was received and that it is not expected from the petitioner no. 1 to place on record any direct evidence of the fact that

her husband died as a result of custodial torture as it was within the exclusive knowledge of the police officer in whose custody he was and, therefore, the onus is on the investigating officer, who at the relevant time, was interrogating her husband. The facts and circumstances rather support the petitioner no.1's case that her husband who was 25 years old could not have suffered cardiac attack unless he was subjected to torture.

11. In so far as the question of grant of compensation to the dependents of the person who has died in police / judicial custody due to torture / ill-treatment meted out to the victim including denial of / negligence in providing medical treatment, it is well settled that when the constitutional and legal rights of a person are invaded with a mischievous or malicious intent, the court has jurisdiction to compensate the victim, by awarding suitable monetary compensation (Bhim Singh vs. State of Jammu & Kashmir & Ors., (1985) 4 SCC 677; Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa & Ors. (1993) 2 SCC 746; D.K. Basu vs. State of West Bengal (1997) 1 SCC 416 and People's Union for Civil Liberties vs. Union of India and Anr. (1997) 1 SCC 301).

12. In the midst of hearing, this Court, with the able assistance of the learned counsel for the

petitioners and the learned Public Prosecutor, examined the record and proceedings including post mortem report and the report of the magisterial enquiry and taking into consideration that the State has already sanctioned sum of Rs. 1 lac as compensation to the petitioner, the learned Public Prosecutor, was kind enough to seek further instructions in the matter and at the intervention of the Court made an offer that in addition of the sum of Rs. 1 lac, the State has agreed to enhance the compensation by an additional sum of Rs. 1.5 lacs.

13. The learned counsel for the petitioners after much hesitation and taking instructions from the petitioner no. 1 who is personally present in the Court agreed to accept this offer but insisted that the amount of Rs. 2.5 lacs offered as compensation can be invested in the name of petitioner no. 2 who is a minor daughter of the deceased and as for present the petitioner no. 1 is gainfully employed but the nature of her service is temporary, the State may be directed to confirm her in service as Anganwadi Sevika and promote her as supervisor.

14. The learned Public Prosecutor submitted that i so far as the service of the petitioner no. 1 is concerned, as claimed by her she has already put in five years of service and if there is a clear vacancy and the petitioner no. 1 has been appointed in

accordance with the prescribed procedure, then in due course of time she is bound to be confirmed. In so far as promoting her to the post of supervisor is concerned, it would be governed by the Rules and Regulations which govern her employment and, therefore, State cannot make any commitment to that effect.

15. We find that the offer made by the State can be accepted and the sum of Rs. 2.5 lacs in the given facts and circumstances can be awarded as compensation to the petitioners but subject to certain conditions that the said amount of Rs. 2.5 lacs will be invested in RBI bond till petitioner no. 2 attains majority and which can be permitted to be withdrawn on attaining majority. In so far as petitioner no. 1 is concerned, her service conditions can be secured by regularising her service in accordance with the rules and regulations which govern her service conditions.

16. We, therefore, direct the State to deposit a sum of Rs. 2.5 lacs with Collector, Sholapur within a period of 4 weeks from the date of this order. Collector Sholapur shall invest the said amount in RBI Bonds in the name of Petitioner No. 2 C/o. Petitioner No. 1 as her natural guardian. Petitioner No. 2 shall be entitled to withdraw the amount so invested with interest on attaining majority.

17. We grant liberty to Petitioner to apply to the Court if the said amount or part of it required to be withdrawn in the interest and for the welfare of

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Petitioner no. 2 like health, education and so on.

18. The Collector may consider the case of Petitioner No. 1 for regularisation of her service in accordance with the rules and regulations governing her terms of employment including her promotion as and when it is due.

19. Rule is made absolute accordingly with no order as to costs.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)